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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 BARRY LOUIS LAMON,) Case No.: 1:20-cv-00896-AWI-SAB (PC)
12 Plaintiff,)
13 v.) FINDINGS AND RECOMMENDATION
14 C. PFEIFFER, et.al.,) RECOMMENDING PLAINTIFF’S MOTION
15 Defendants.) FOR TEMPORARY RESTRAINING ORDER BE
16) DENIED
17) [ECF No. 3]
18)

19 Plaintiff Barry Louis Lamon is appearing *pro se* and *in forma pauperis* in this civil rights
20 action pursuant to 42 U.S.C. § 1983.

21 Currently before the Court is Plaintiff’s motion for a temporary restraining order, filed on June
22 29, 2020.

23 **I.**

24 **LEGAL STANDARDS**

25 Procedurally, a federal district court may issue emergency injunctive relief only if it has
26 personal jurisdiction over the parties and subject matter jurisdiction over the lawsuit. See Murphy
27 Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350 (1999) (noting that one “becomes a
28 party officially, and is required to take action in that capacity, only upon service of summons or other

1 authority-asserting measure stating the time within which the party serve must appear to defend.).
 2 Furthermore, the pendency of this action does not give the Court jurisdiction over prison officials in
 3 general. Summers v. Earth Island Inst., 555 U.S. 488, 491–93 (2009); Mayfield v. United States, 599
 4 F.3d 964, 969 (9th Cir. 2010). The Court’s jurisdiction is limited to the parties in this action and to the
 5 viable legal claims upon which this action is proceeding. Summers, 555 U.S. at 491–93; Mayfield,
 6 599 F.3d at 969.

7 A temporary restraining order is an extraordinary measure of relief that a federal court may
 8 impose without notice to the adverse party if, in an affidavit or verified complaint, the moving party
 9 “clearly show[s] that immediate and irreparable injury, loss, or damage will result to the movant
 10 before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). The standard for
 11 issuing a temporary restraining order is essentially the same as that for issuing a preliminary
 12 injunction. Stuhlbarg Int’l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839 n.7 (9th Cir. 2001)
 13 (analysis for temporary restraining orders and preliminary injunctions is “substantially identical”).

14 “A preliminary injunction is an extraordinary remedy never awarded as of right.” Winter v.
 15 Nat. Res. Def. Council, Inc., 555 U.S. 7, 24 (2008) (citation omitted). “A plaintiff seeking a
 16 preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to
 17 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
 18 favor, and that an injunction is in the public interest.” Id. at 20 (citations omitted). An injunction may
 19 only be awarded upon a clear showing that the plaintiff is entitled to relief. Id. at 22 (citation omitted).
 20 “Under Winter, plaintiffs must establish that irreparable harm is *likely*, not just possible, in order to
 21 obtain a preliminary injunction.” Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th
 22 Cir. 2011).

23 Requests for prospective relief are further limited by 18 U.S.C. § 3626(a)(1)(A) of the Prison
 24 Litigation Reform Act, which requires that the Court find the “relief [sought] is narrowly drawn,
 25 extends no further than necessary to correct the violation of the Federal right, and is the least intrusive
 26 means necessary to correct the violation of the Federal right.” Section 3626(a)(2) also places
 27 significant limits upon a court’s power to grant preliminary injunctive relief to inmates. “Section
 28 3626(a) therefore operates simultaneously to restrict the equity jurisdiction of federal courts and to

1 protect the bargaining power of prison administrators – no longer may courts grant or approve relief
 2 that binds prison administrators to do more than the constitutional minimum.” Gilmore v. People of
 3 the State of California, 220 F.3d 987, 999 (9th Cir. 2000).

4 II.

5 DISCUSSION

6 In his motion, Plaintiff seeks a temporary restraining order for Defendants to properly identify
 7 and list all known enemies and to stop retaliating against him for filing inmate grievances/complaints.
 8 Plaintiff contends that in 2016 he was housed with an incompatible inmate.

9 First, at this juncture of the case, the Court cannot determine that Plaintiff is likely to succeed
 10 on the merits of the Case. Second, the United States Marshal has yet to effect service on any
 11 Defendant, and Defendants have no actual notice. Therefore, the Court has no personal jurisdiction
 12 over any Defendant at this time. Fed. R. Civ. P. 65(d)(2); Murphy Bros., Inc. v. Michetti Pipe
 13 Stringing, Inc., 526 U.S. 344, 350 (1999); Zepeda v. U.S. I.N.S., 753 F.2d 719, 727-28 (9th Cir. 1983).
 14 Third, even if the Court had personal jurisdiction over the individuals named in the complaint,
 15 Plaintiff has failed to demonstrate imminent irreparable harm necessary to support a preliminary
 16 injunction. See Winter, 555 U.S. at 20; Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131
 17 (9th Cir. 2011). “The fact that plaintiff has met the pleading requirements allowing him to proceed
 18 with the complaint does not, ipso facto, entitle him to a preliminary injunction.” Claiborne v. Blausner,
 19 No. CIV S-10-2427 LKK, 2011 WL 3875892, at *8 (E.D. Cal. Aug. 31, 2011), report and
 20 recommended adopted, No. CIV S-10-2427 LKK, 2011 WL 4765000 (E.D. Cal. Sept. 29, 2011).
 21 Instead, to meet the “irreparable harm” requirement, Plaintiff must do more than simply allege
 22 imminent harm; he must demonstrate it. Caribbean Marine Servs. Co., Inc. v. Baldridge, 844 F.2d
 23 668, 674 (9th Cir. 1988). Mere “[s]peculative injury does not constitute irreparable injury sufficient to
 24 warrant granting a preliminary injunction.” Id. at 674-75.

25 Plaintiff does not have a constitutional right to be housed or transferred to the institution of his
 26 choosing, see Olim v. Wakinekona, 461 U.S. 238, 244-48 (1983), and his allegations of potential
 27 future harm and risk of injury at Kern Valley State Prison based on past threats and revelations are
 28 merely speculative. See Caribbean Marine, 844 F.2d at 674-75. Further, while Plaintiff does allege to

1 have been attacked by an enemy inmate in 2016, and fears another potential attack, he fails to
 2 *establish* that he currently faces the type of immediate and credible threat of irreparable harm
 3 necessary to justify extraordinary injunctive relief at this stage of the case. City of Los Angeles v.
 4 Lyons, 461 U.S. 95, 102(1983); Goldie’s Bookstore, Inc. v. Superior Court of State of Cal., 739 F.2d
 5 466, 472 (9th Cir. 1984) (“Speculative injury does not constitute irreparable injury.”); Rigsby v. State,
 6 No. CV 11-1696-PHX-DGC, 2013 WL 1283778, at *5 (D. Ariz. Mar. 28, 2013) (denying prisoner’s
 7 TRO based on fear of potential future injury based on past assaults); Chappell v. Stankorb, No. 1:11-
 8 CV-01425-LJO, 2012 WL 1413889, at *2 (E.D. Cal. Apr. 23, 2012) (denying injunctive relief where
 9 prisoner’s claims of injury based on current or future housing decisions were nothing “more than
 10 speculative.”), report and recommendation adopted, No. 1:11-CV-01425-LJO, 2012 WL 2839816
 11 (E.D. Cal. July 9, 2012). A presently existing actual threat must be shown, even though injury need
 12 not be certain to occur. See Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 130-31
 13 (1969); FDIC v. Garner, 125 F.3d 1272, 1279-80 (9th Cir. 1997); Caribbean Marine, 844 F.2d at 674.
 14 Plaintiff’s vague allegations do not support a finding of irreparable future harm. Accordingly,
 15 Plaintiff’s request for a temporary restraining order should be denied.

16 III.

17 RECOMMENDATION

18 Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff’s motion for a
 19 temporary restraining order (ECF No. 3), be DENIED.

20 This Findings and Recommendation will be submitted to the United States District Judge
 21 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14)**
 22 **days** after being served with these Findings and Recommendation, Plaintiff may file written objections
 23 with the court. The document should be captioned “Objections to Magistrate Judge’s Findings and
 24 Recommendation.” Plaintiff is advised that failure to file objections within the specified time may

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1 result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. Wilkerson
2 v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir.
3 1991)).

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5 IT IS SO ORDERED.

6 Dated: July 20, 2020


UNITED STATES MAGISTRATE JUDGE